IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY EIGHTH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE A.GOPAL REDDY

WRIT PETITION NO : 11467 of 2004

Between:

M/s. Andhra Pradesh Housing Board Allottees Association, rep by its President Sri Mallepalli Vijaya Rama Raju, A.P.H.B. Colony,

Bheemavaram - 534 203.

..... PETITIONER

AND

1. The Principal Secretary, Housing, Secretariat, Govt. of A.P.

   Hyderabad.
2. The Executive Engineer, Andhra Pradesh Housing Board,
   Tadepalligudem, West Godavari District.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of Mandamus, or any other appropriate writ, order or direction, declaring the action of the respondent authorities in selling away the open lands in Andhra Pradesh Housing Board Colony, Bheemavaram, to the 3rd parties, which are originally demarcated in the layout for the purpose of green belt development, by issuing Notification No.A.3/EM/AUCTION/2004, Dated 10-05-2004 as arbitrary, illegal, null and void and is against the principles of natural justice and norms of the public policy and contrary to the provisions of Andhra Pradesh Housing Board Act.

Counsle for the Petitioner:MR.VENKATESWARA RAO GUDAPATI, Advocate

For the Respondent No.1: GP FOR HOUSING

Counsel for the Respondent No.2: D.Ranganath Kumar, S.C for Housing Board.

The Court made the following :

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ORDER:

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The Association of A.P.Housing Board Allottees, Bhimavaram, filed the present writ petition, complaining that certain areas and sites, which are left vacant for the purpose of green belt development, are now sought to be sold as vacant plots to third parties through Notification No.A3/EM/AUCTION/2004, dated 10-05-2004.

It is stated that once the lands are shown for the purpose of green belt development, the Housing Board cannot change the layout plan and invite the applications for sale of plots as stray plots. All such open spaces notified are very small extent of lands, which are admeasuring about 9 feets width and 59 feets length, which are adjacent to the road and if the said properties are sold the entire colony would suffer for not having open spaces for free flow air and sun light resulting suffocating. In view of the same, the respondent authorities should be restrained from selling the said plots, which was originally demarcated for the purpose of green belt development.

Second respondent filed a counter affidavit, stating that the Housing Board developed a big housing colony at Bhimavaram in an extent of Ac.31.24 Cents of land acquired at the cost of Rs.2.19 crores, as per the consent award No.30/94, dated 30-9-1994 and after preparing a tentative lay-out submitted the same to the Director of Town and Country Planning and after sanctioning of the layouts, the plots were sold to the respective purchasers. The plots are nothing to do with the spaces earmarked for open spaces in the sanctioned layout and they have strictly left out as open spaces. There are certain irregular size and shape and stray pieces unsuitable

for constructing houses by the A.P.Housing Board. In view of the same, the Government of A.P in exercise of its powers under S.45 of the A.P.Housing Board Act, 1956, read with Rule 29 of the A.P.Housing Board Rules, 1959, has issued G.Os. from time to time in respect of disposal of such stray pieces of lands, admeasuring less than 100 Square Yards and above in area . The Government in G.O.Ms.No.38, Housing dated 30-5-1997, accorded permission for sale of the said stray peaces of land. Accordingly the Housing Board issued notification and auction was proceeded, and the same was accepted in favour of the highest bidder. On such acceptance, the highest bidder paid 25% of the bid amount and 1% towards auction charges as per the terms of the auction notice. On such payment of the bid amount, the Housing Board asked him to pay the remaining balance of 3/4th bid amount on or before 8-9-2004. The said highest bidder paid the balance 3/4th bid amount on 13-7-2004, along with plan and conveyance charges and submitted other documents required for registration.

It is specifically denied that the lands, which are being sold by way of public auction, are not among the spaces earmarked for green belt by the A.P.Housing Board or Director of Town, and Country Planning, A.P., who has sanctioned the approved Lay Out L.P.No.95/APHB. In View of the same, Housing Board, which is the owner of the property, can dispose of the same, and accordingly, the impugned notification, was issued.

Learned counsel for the petitioner contends that the said plots were purchased by the colony residents by paying the entire consideration amount to the original landlord for the purpose of laying of approach road and now converting certain extent of the said land as house site by the respondent authorities. The very purpose of purchasing the said land is for laying of approach road to the colony, hence if any land is sold from the said land which is meant for the purpose of approach road, it would result in blocking of the approach road to the colony, by virtue of which the entire colony shall suffer if any constructions are made in the land which is originally demarcated for the purpose of approach road.

All these are disputed questions of fact cannot be gone into in a petition filed under Article 226 of the Constitution of India. In view of the same, if any easementry right of the petitioner is affected, the proper remedy is to approach the civil Court by

instituting the civil suit.

The Writ Petition fails accordingly, dismissed. No costs.

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28th July, 2004.

Mrb

ASSISTANT REGISTRAR

// TRUE COPY//

SECTION OFFICER

To

1. The Principal Secretary, Housing, Secretary, Govt. of A.P.

   Hyderabad.

2. The Executive Engineer, Andhra Pradesh Housing Board,
   Tadepalligudem, West Godavari District.

3. Two CD copies to G.P. for Housing, High Court Buildings,

Hyderbad(OUT).